



# **Follow-up Policy Monitoring Review of Scurry County's Indigent Defense Systems**

**February 2023**



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**Mission:** Protecting the right to counsel, improving public defense

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## Executive Summary

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act through policy reviews.<sup>1</sup> In this follow-up review, TIDC interviewed officials and reviewed FY2021 data from Scurry County. TIDC found that the three previous report's findings remained pending:

- a. Untimely transmission of counsel requests to the appointing court.
- b. Untimely misdemeanor appointments.
- c. No processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel.

TIDC thanks Scurry County officials and staff for their assistance in completing this review. TIDC stands ready to provide technical or financial assistance to remedy these issues. TIDC will conduct a second follow-up review regarding its finding within two years.<sup>2</sup>

## Background

In May 2017, TIDC conducted a drop-in review of Scurry County to monitor local procedures for appointing counsel in misdemeanor cases. TIDC examined a small sample of misdemeanor cases and found that the county court did not receive all requests for counsel. When misdemeanor arrestees requested counsel, their requests were not typically ruled upon.

In November 2019, TIDC staff conducted a limited scope review that examined whether misdemeanor arrestees had the ability to request and receive appointed counsel. The review report identified issues with transmitting indigence applications from magistrates to the courts, ruling on indigence applications, and timely appointment of counsel.

Historically, the percentage of misdemeanor defendants receiving appointed counsel in Scurry County has been significantly lower than the statewide average (see Table 1).

**Table 1: Misdemeanor Cases Paid as a Percentage of New Cases Added**

Year	2017	2018	2019	2020	2021	Texas 2021
Misdemeanor Cases Disposed	266	169	271	220	327	325,541
Misdemeanor Cases Paid	5	11	0	3	64	143,702
% Misdemeanor Cases Paid	2%	7%	0%	1%	20%	44%

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<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

<sup>2</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Current Review**

TIDC’s policy monitoring rules require follow-up reviews where the report includes noncompliance findings.<sup>3</sup> TIDC staff members Joel Lieurance and William R. “Bill” Cox visited Scurry County to conduct a limited scope review on May 23 and 24, 2022. TIDC examined whether Scurry County successfully addressed the findings and recommendations from the November 2019 report. The review focused on the ability of misdemeanor arrestees to request and obtain appointed counsel. TIDC compared local practices to two core requirements of the Fair Defense Act:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

TIDC examined 88 misdemeanor cases filed in FY2021 (October 2020 – September 2021), observed magistration hearings, and interviewed local officials.

**Table 2: History of Monitoring Findings and Recommendations**

FDA Core Requirement	Description and Initial Year of Finding and Recommendation	Status after February 2023 Review	
		Satisfied	Pending
1. Prompt Magistration	Requests for counsel made at the Article 15.17 hearing are not always transmitted to the trial court within 24 hours of the request being made. (2019)		✓
4. Prompt Appointment	The timeliness of misdemeanor counsel appointments does not meet TIDC’s administrative threshold (90% of sample cases receive timely rulings). Under Article 1.051, counsel must be appointed within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. (2019)		✓
4. Prompt Appointment	Requests for counsel are not always ruled upon prior to a waiver of counsel (as required by Article 1.051(f-2)). (2019)		✓

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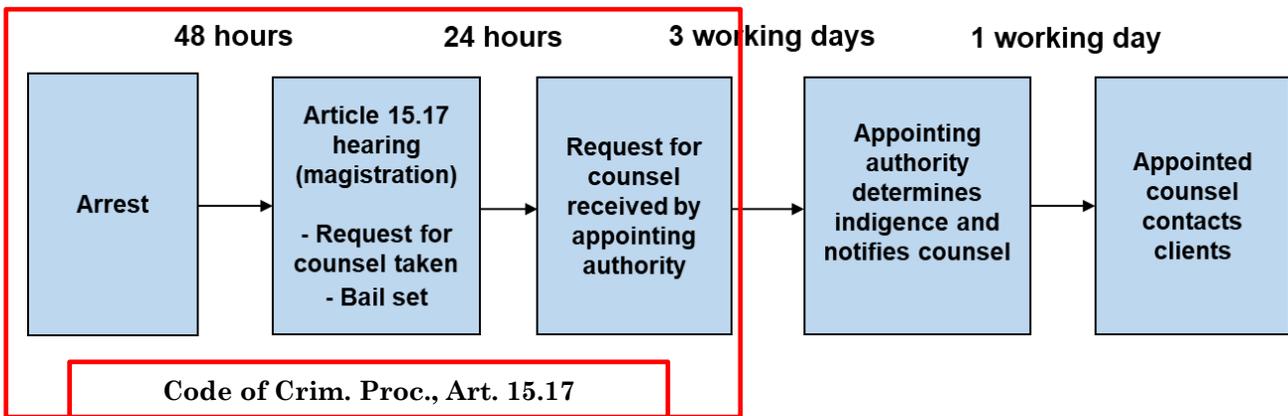
<sup>3</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

## Program Assessment

### **REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS**

A person must be brought before a magistrate within 48 hours of arrest.<sup>4</sup> At this hearing, the magistrate must inform the arrestee of their right to counsel; inform the arrestee of the procedures for requesting counsel; and ensure the arrestee has reasonable assistance in completing the necessary forms for requesting assistance of counsel.<sup>5</sup> Within 24 hours of receiving a request for counsel, the magistrate must transmit this request to the appointing authority.<sup>6</sup>

**Figure 1a: Timeline for Appointment of Counsel in Adult Criminal Cases**



#### ***Ability of Arrestees to Request Counsel***

At the Article 15.17 hearing, the magistrate must inform the accused of their right to counsel, ask whether the accused wants to request counsel, and receive the accused's request for counsel.<sup>7</sup> The magistrate must make a record of each step of this exchange.<sup>8</sup>

Justices of the peace and municipal judges must report this data to OCA as part of their Judicial Council Monthly Court Activity Reports. TIDC uses these reports, as well as court observations and case file records, to determine if magistrates inform arrestees of their right to counsel and if arrestees can invoke that right. Both Scurry County justices of the peace reported receiving a significant number of counsel requests, indicating that arrestees can request counsel at the Article 15.17 hearing.

<sup>4</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>8</sup> TEX. CODE CRIM. PROC. art. 15.17(e).

**Table 3: Texas Judicial Council Monthly Court Activity Reports for  
Scurry County (Oct. 2020 – Sept. 2021)**

<b>Court</b>	<b>Misd. Requests</b>	<b>Misd. Warnings</b>	<b>Misd. Req. Rate</b>	<b>Felony Requests</b>	<b>Felony Warnings</b>	<b>Fel. Req. Rate</b>
JP1	52	79	65.8%	55	97	56.7%
JP2	63	130	48.5%	96	168	57.1%
Countywide JPs	115	209	55.0%	151	265	57.0%

***Completion and Transmission of Financial Forms to the Appointing Authority***

At the Article 15.17 hearing, the magistrate must ensure the arrestee has reasonable assistance in completing the necessary forms for requesting counsel.<sup>9</sup> Within 24 hours of a defendant requesting counsel, the request and financial paperwork must be transmitted to the person authorized to appoint counsel.<sup>10</sup> For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant issuing county.<sup>11</sup>

TIDC obtained magistrate warning records from the Scurry County Sheriff’s Office.<sup>12</sup> The forms were generally not part of the clerk’s case file. Based on interviews, the court does not typically receive magistrate warning forms. Article 15.17 requires requests and associated financial paperwork be transmitted to the person authorized to appoint counsel within 24 hours of the request having been made. TIDC is available to provide technical assistance to ensure that requests for counsel are promptly sent to the court.

To address transmittal issues, County officials and staff may wish to discuss methods to ensure financial information is received from defendants and promptly handed to the courts.

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<sup>9</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>10</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>11</sup> TEX. CODE CRIM. PROC. art. 15.18 (a-1).

<sup>12</sup> Scurry County Sheriff’s staff retained copies of magistration warning forms in their files for all individuals who were magistrated. They provided forms for 36 of the 88 misdemeanor cases sampled and indicated some arrestees may have been released on bond or a summons prior to magistration. In addition, County officials indicated that one of the two justices of the peace has stopped performing magistration hearings and inquests.

## FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

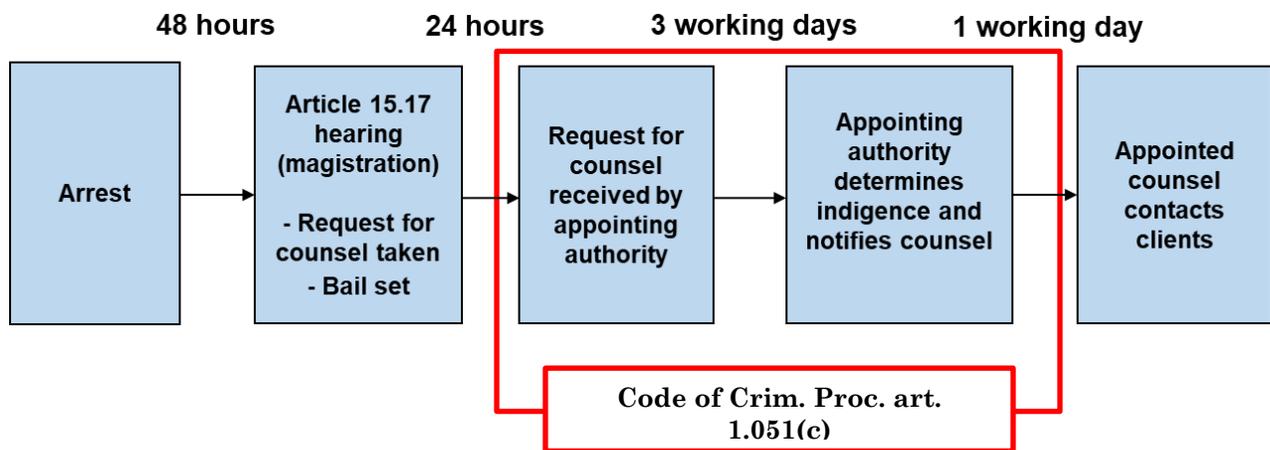
### **Conduct Prompt and Accurate Magistration Proceedings**

**2019 FINDING AND RECOMMENDATION 1:** Article 15.17(a) requires requests for counsel to be transmitted to the courts within 24 hours of the requests being made. Scurry County must ensure that whenever a request for counsel is made at the Article 15.17 hearing, the arrestee is provided with reasonable assistance in completing financial paperwork. The request and financial paperwork must be sent to the courts within 24 hours of the request being made. *Issue Pending.*

### **REQUIREMENT 4: APPOINT COUNSEL PROMPTLY**

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within three working days of receiving the request.

**Figure 1b: Timeline for Appointment of Counsel in Adult Criminal Cases**



### ***Timeliness of Appointments in Misdemeanor Cases***

To assess the timeliness of Scurry County's current appointment procedures in misdemeanor cases, TIDC examined 88 sample misdemeanor cases filed in FY2021 (October 2020 – September 2021). With help from sheriff's office staff, TIDC was able to obtain magistrate warning forms for 36 of the 88 case files. Defendants requested counsel on 21 of these 36 forms. Of the 21 requests for counsel, 14 were not ruled upon, and 7 were ruled upon more than 2 months later. Additionally, defendants made 9 requests for counsel at misdemeanor dockets, all of which were ruled upon within the statutory timeframe. (**30% timely**). This does not meet TIDC's 90% timely threshold for presuming a jurisdiction's procedures ensure prompt appointment of counsel.

**Table 4: Times to Appointment in Misdemeanor Cases**

	Sample Size	Number from sample	Percent
Number of case files examined	88		
Total cases with a counsel request <sup>13</sup>		30	
Appointment / denial of indigence occurred in:			
0 work days		8	
1 – 3 work days + 24 hour transfer		1	
<b>Total timely appointments / denials</b>		<b>9</b>	<b>30%</b>
More than 3 work days + 24 hour transfer		7	
No ruling on request		14	
Total untimely appointments / denials		21	70%

### *Waivers of Counsel*

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel and allows waivers that are voluntarily and intelligently made. Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is denied, and the defendant waives the opportunity to retain private counsel. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel to an unrepresented defendant and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the attorney representing the state. If a defendant enters an uncounseled plea, the defendant must sign a written waiver, the language of which must substantially conform to the language of Article 1.051(g).

TIDC's case file examination contained 14 samples in which defendants requested counsel at the Article 15.17 hearing, but the court did not receive, and so was unable to rule on the requests. In one of these cases, the defendant entered an uncounseled plea without the request having been ruled upon. The absence of a ruling on a pending request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Scurry County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).

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<sup>13</sup> Additional requests may have been made; however, TIDC did not obtain magistrate warning forms for all sample cases.

## FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

### **Prompt Appointment**

**2019 FINDING AND RECOMMENDATION:** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. Scurry County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases. *Issue Pending.*

**2019 FINDING AND RECOMMENDATION:** The absence of a ruling in sample misdemeanor requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). Scurry County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2). *Issue Pending.*

### **Conclusion**

TIDC thanks Scurry County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance findings within two years.<sup>14</sup> TIDC staff stand ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

### **Summary Findings and Recommendations**

Scurry County must respond in writing how it will address each of these findings and recommendations.

**2023 FINDING AND RECOMMENDATION 1:** Article 15.17(a) requires requests for counsel to be transmitted to the courts within 24 hours of the requests being made. Scurry County must ensure that whenever a request for counsel is made at the Article 15.17 hearing, the arrestee is provided with reasonable assistance in completing financial paperwork. The request and financial paperwork must be sent to the courts within 24 hours of the request being made.

**2023 FINDING AND RECOMMENDATION 2:** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. Scurry County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases.

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<sup>14</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

**2023 FINDING AND RECOMMENDATION 3:** The absence of a ruling in sample misdemeanor requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). Scurry County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).